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**BURBAGE GRANT OWNERS ASSOCIATION  
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May 3, 1996

**FEDERAL EXPRESS**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

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**RE: Telecommunications Act of 1996 and  
FCC Proposed Paragraph (f) to Section 25.104 of FCC Rules**

Ladies and Gentlemen:

We are a nonprofit homeowners association for a 597 acre planned residential development known as "Burbage Grant" at Harbourview in Suffolk, Virginia. Upon buildout we estimate that we will represent approximately 1500 residential homes. We reviewed the proposed new rule applicable to nongovernmental regulation of satellite dish antennas, and we have the following comments.

1. **The proposed rule as interpreted in the FCC's comments is overly broad because it automatically invalidates private contractual covenants which impose reasonable rules regarding placement and screening of satellite dish antennas which do not "impair" a viewer's ability to receive video programming.** Such a broad "per se" rule is unnecessary and exceeds the scope of the FCC's objective to protect commerce and the free trade of information.

For example, our community's architectural guidelines, which are agreed to by every owner who purchases a home in our community, provide that owners may erect one satellite dish antenna behind the rear of their homes without submitting an application to the Architectural Review Board ("ARB"). However, if a resident desires to place such a satellite dish antenna in front of their home, then they must submit an application to the ARB. The purpose of the application (which is without cost) is to ensure that the satellite

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dish antenna is placed in an area in front of the house which is screened from view. Satellite dish antenna distributors have indicated that about 98% of the dish antennas can be placed behind the house, thereby avoiding any need for an ARB application in most instances. However, in the rare occasion in which reception cannot be obtained in the back of the house, our objective is to protect the property values of the community by minimizing the visual impact of the dish antenna while at the same time accommodating the homeowner's objective of receiving video programming.

As we understand it, the FCC's application of the new rule would invalidate even minimal nongovernmental covenants like the one adopted by our ARB. Accordingly, the Rule is overly broad in scope and should be revised to allow reasonable private covenants designed to allow reception while at the same time protecting the aesthetics of the community in which residents choose to live precisely because of such covenants.

2. **The FCC's higher standard for nongovernmental restrictions than for governmental restrictions is misguided.** By wholesale invalidation of private restrictive covenants, the FCC deprives citizens of the valuable right to contract privately as to matters involving real estate. In Virginia, protective covenants like the ones for our community are commonly set forth in a written "declaration" of protective covenants which is recorded in the land records in the circuit court. The declaration is viewed by the courts as a private contract to which purchasers agree to be bound when they purchase property. Unlike a governmental zoning ordinance which results from the local government's use of its police and legislative powers, the covenants set forth in the declaration are the result of choice. Residents choose to live in these communities because of the protective covenants and their enhancement of property values. Thus, the FCC's conclusion that private agreements should receive "less deference on this basis" is fatally flawed.

3. **The FCC's proposed new rule unfairly favors the small satellite dish industry over private property rights.** Our overwhelming conclusion after reviewing the Report and Order was that private property rights are being sacrificed for big industry. We are all in favour of free trade and access to communication products. However, when this goal can be met by far less obtrusive means, we must object to a means whereby private agreements are thrown by the wayside without regard to the property rights governed by such agreements.

For example, our covenants, like those of many communities, require utility wires and cables such as cable television wires and telephone wires, to be buried underground within easement areas. This is a generally accepted practice not just locally but nationwide. Although it costs developers more, it is a rule that originated from a desire to protect aesthetics and the overall economic well-being of the community. Most communities today are recognizing the wisdom behind such a rule and its importance to the long term financial viability of a community. How are our ARB's covenants requiring screening of satellite dish antennas significantly different from a rule requiring buried cablevision lines?

We strongly urge the FCC to revise the proposed rule to more fairly recognize the private property right of individuals and to eliminate any "per se invalid" approach to nongovernmental regulations of satellite dish antennas.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Williams". The signature is fluid and cursive, with a large, stylized "R" and "W".

Robert T. Williams

President